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Jean-Louis Gueret

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EXAMINER

GHALL, ISIS A D

ART UNIT

PAPER NUMBER

1611

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary****Application No.**

09/779,095

**Applicant(s)**

GUERET, JEAN-LOUIS

**Examiner**

Isis A. Ghali

**Art Unit**

1611

**– The MAILING DATE of this communication appears on the cover sheet with the correspondence address –  
Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM  
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 December 2010.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,5,6,8-30 and 35-68 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,5,6,8-30 and 35-68 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

The receipt is acknowledged of applicant's amendment and request for RCE filed 12/21/2010.

Claims 1, 5, 6, 8-30, 35-68 are pending and included in the prosecution.

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 12/21/2010 has been entered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 9 is confusing because the claim is directed to "moisture

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absorbing compounds” and lists magnesium as one of compounds. Magnesium is metal and known to be used in battery and mirrors, and not known for use in cosmetic as evident by the provided pages of Hawley’s Condensed Chemical Dictionary.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1, 5, 6, 8-11, 14-30, 35-60, 65-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sternfield et al. (US 2,665,528) in view of Smith (US 6,491,928) and Gueret (CA 2186042), all references are of record.

### **Applicant Claims**

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Applicant's claim 1 is directed to a composite structure for at least one of treating, making up, and cleaning surface region of skin or hair, the composite structure comprising: at least two non-adhesive layers, at least one of the two non-adhesive layers being permeable to a solvent and defining an outer surface of the composite structure, the outer surface being configured to be placed into contact with the surface region; and at least one adhesive matrix between the two non-adhesive layers, the adhesive matrix comprising a permanent adhesive, the two non-adhesive layers being permanently bonded to the adhesive matrix, the adhesive matrix containing at least one active agent that is soluble in said solvent and at least one moisture-absorbing compound configured to swell within the adhesive matrix upon contact with the solvent to reduce cohesion between the adhesive matrix and the at least one active agent, wherein the composite structure is configured so that when the composite structure is wetted by the solvent, the active agent is released from the adhesive matrix and diffuses towards the surface region.

Applicant's claim 27 is directed to a method of manufacturing a composite structure for at least one of cleaning, treating, and making up a surface region of skin or hair, the method comprising: coating a first non-adhesive layer with an adhesive matrix comprising a permanent adhesive, said adhesive matrix containing at least one active agent and at least one moisture-absorbing compound configured to swell within the adhesive matrix upon contact with the solvent to reduce cohesion between the adhesive matrix and the at least one active agent, the active agent being released when the composite structure is wetted by a solvent; and assembling together the coated first non-adhesive layer with a second non-adhesive layer such that the adhesive matrix is sandwiched between the first non-adhesive layer and the second non-adhesive layer and such that one of the first and second non-adhesive layers defines an outer surface of the composite structure, the outer surface being configured to be placed into contact with the surface region, the first non-adhesive layer and the second non-adhesive layer being permanently bonded together by the adhesive matrix, and said one of the first and second non-adhesive layers being permeable to a solvent.

Applicant's claim 54 is directed to a composite structure for at least one of treating, making up, and cleaning a surface region of skin or hair, the composite structure comprising: at least two non-adhesive layers, at least one of the two non-adhesive layers being permeable to a solvent and defining an outer surface of the composite structure, the outer surface being configured to be placed into contact with the surface region; and at least one adhesive matrix between the two non-adhesive layers, the adhesive matrix comprising a permanent adhesive, the two non-adhesive layers being permanently bonded to the adhesive matrix, the adhesive matrix containing at least one active agent that is soluble in said solvent and at least one compound configured to swell within the adhesive matrix upon contact with the solvent to reduce cohesion between the adhesive matrix and the at least one active agent, wherein the composite structure is configured so that when the composite structure is wetted by the solvent, the active agent is released from the adhesive matrix and diffuses towards the surface region, and wherein the structure is configured such that the adhesive matrix does not come into contact with the surface region.

Applicant's claim 55 is directed to an anhydrous composite structure for at least one of treating, making up, and cleaning a surface region of skin or hair, the composite structure comprising: at least two non-adhesive layers, at least one of the two non-adhesive layers being permeable to a solvent and defining an outer surface of the composite structure, the outer surface being configured to be placed into contact with the surface region; and at least one adhesive matrix between the two non-adhesive layers, the adhesive matrix comprising a permanent adhesive, the two non-adhesive layers being permanently bonded to the adhesive matrix, the adhesive matrix containing at least one active agent that is soluble in said solvent and at least one compound configured to swell within the adhesive matrix upon contact with the solvent to reduce cohesion between the adhesive matrix and the at least one active agent, wherein the composite structure is configured so that when the composite structure is wetted by the solvent, the active agent is released from the adhesive matrix and diffuses towards the surface region, and wherein the composite structure does not adhere to the surface region before being wetted by the solvent.

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Applicant's claim 56 is directed to an anhydrous composite structure for at least one of treating, making up, and cleaning a keratinous surface region of the human skin or hair, the composite structure comprising: at least two support layers, at least one of the two support layers being permeable to a solvent, said support layers forming external faces of the structure, wherein at least one of the external faces of the structure is configured to be placed into contact with the keratinous surface region; and at least one adhesive matrix between the two support layers, the two support layers being permanently bonded to the adhesive matrix, the adhesive matrix containing at least one active agent that is soluble in said solvent and at least one moisture- absorbing compound configured to swell within the adhesive matrix upon contact with the solvent to reduce cohesion between the adhesive matrix and the at least one active agent, wherein the composite structure is configured so that when the composite structure is wetted by the solvent, the active agent is released from the adhesive matrix and diffuses towards the surface region.

Applicant's claim 68 is directed to a composite structure for at least one of treating, making up, and cleaning a surface region of the human body, the composite structure comprising: at least two support layers; and at least one adhesive matrix between the two support layers, the two support layers being permanently bonded to the adhesive matrix, the at least one adhesive matrix comprising at least one active agent chosen from vitamin C, vitamin A, vitamin F, glycerin, laponite, collagen, salicylic acid, tio acid, caffeine, aromatic essential oils, coloring agents, anti-oxidants, free radical scavengers, moisturizers, depigmenting agents, liporegulators, anti-acne agents, antidandruff agents, anti-aging agents, antiwrinkle agents, keratolitic agents, anti-inflammatory agents, fresheners, healing agents, vascular protectors, antiperspirants, deodorants, skin conditioners, anesthetics, immunomodulators, and nourishing agents; wherein the composite structure has a substantially constant thickness.

### **Determination of the Scope and Content of the Prior Art**

#### **(MPEP §2141.01)**

Sternfield teaches cleansing tissue comprising from top down: non-woven fabric perforated non-woven layer (10), adhesive layer impregnated with active agent (12), adhesive layer impregnated with active agent (16), non-woven perforated layer (18). The above structure can be continued to form plurality of laminated structure. Non-woven fabric is non-adhesive. Cleansing agent includes fungicides, cleansing agent, and abrasives. The layers are laminated, and not disclosed to be separated from each other, therefore, the adhesive used is permanent adhesive. Upon use the tissue is wetted, it slowly releases the active agent. Abrasive materials read on inert substance claimed by claim 10. Layer (10) has high mechanical strength, i.e. different from layer (18), reads on claim 17. The adhesive layers read on impermeable layer claimed by

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claim 18. The tissue may adhere to the surface to be cleaned, reads on claim 47. See col.1, lines 1-5, 27-55; col.2, lines 20-55; col.4, lines 46-75; col.5, lines 10-117; col.6, lines 1-5; figure 6.

**Ascertainment of the Difference Between Scope the Prior Art and the Claims  
(MPEP §2141.012)**

Sternfield does not explicitly teach use on skin or hair as instantly claimed by claims 1, 27, 54-56, 68. In any event, the present claims are directed to product, and intended use of product does not impart patentability to the claims.

While Sternfield desired to clean surfaces by delivering active agent from the tissue when wetted, however, the reference does not explicitly teaches wetting with water as instantly claimed by claims 5 and 60, and the absorbent materials in the middle layer as claimed by claim 8, 9, 35-44. Sternfield does not teach the specific adhesives as claimed by claim 14.

Smith teaches an article for personal care application and useful in variety of other industries such as automotive care, marine vehicle care, house hold care, dish care, animal care, etc. where surfaces or areas are in need of cleansing and/or application of benefit agent, e.g. wax, conditioner, UV protectant, etc. (col.2, lines 5-10; col.19, lines 28-33). Further, Smith teaches manipulating the active agent and texture of the substrate according to the intended use (col.18, line 63 till col.19, line 25. The article comprises first substrate and second substrate and a therapeutic composition disposed in between the two substrates (abstract; figure 3). The first substrate is perforated and

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made of permeable materials to enable passage of water to release the active agent and activates the cleansing agent when the article get wet (col.3, lines 50-66). The second substrate is can be apertures (co1.9, lines 35-40). The substrates layers are made of non-woven material and can be permeable to water, as required by claims 15 and 16, or impermeable, as required by claim 18 (col.3, lines 64-67; col.4, lines 13-16; col.5, lines 23-25). The two non- adhesive substrates can have different texture, as required by claim 17 (co1.3, lines 39- 46). The therapeutic composition comprises carboxymethyl cellulose or starches that are claimed by applicant as moisture absorbing compounds in Claims 7 and 9 (col.36, lines 9-11; col. 37, lines 1-2). The reference also teaches gelling agents that also read on moisture absorbing agents and it is present in an amount of 0.1 to 100% that encompasses the amounts claimed in claims 8 and 42. The gelling agents include carboxymethyl cellulose, hydroxyethyl cellulose, hydroxypropyl cellulose, starch, which are disclosed by applicants as moisture absorbing compounds (col.36, lines 18-25). The therapeutic composition comprises polyamides claimed by applicants as inert materials in claim 10 (col.43, line 59).

Gueret teaches cosmetic or skin-pharmaceuticals patch for controlled release of at least one cosmetic compound or skin pharmaceutically active on the skin and useful in particular to deliver unstable active agents and ensure their release to the surface of the skin without drug degradation. The patch comprises adhesive polymer matrix or reservoir. The polymer matrix or reservoir comprises self adhesive polymer in which are scattered evenly particles of active compound and particles of at least one hydro-absorbent agent. The matrix or reservoir is based on a silicone polymer or



polyurethane. (See claims 14-16, page 3, page 4, and claims 1-3 of the translation). The active compounds are chosen from vitamin C, vitamin A, vitamin E, enzymes and antibiotics, and the hydro-absorbing agent is chosen from polyacrylates hydro-absorbent, semi- synthetic derivative of cellulose, starches, cotton fibers and gelatin, all meet the limitation of claims 7 and 9. The matrix further comprises powdered soy protein and wheat which read on polyamide powder claimed by claims 43 and 44 (See claims 8-11, page 3 and page 6 of the translation). In contact with moisture from the skin (or possibly in the presence of water applied to the skin or shell layer) particles of hydro-absorbent react and then gradually release the particles of active compound, i.e. the active agent is released from the patch when the patch is wetted with water and contacted the skin as required by the generic claims, and claims 5, 6, 47-49, 65. (See page 5 of the translation). The reference teaches that the cosmetic compound or skin pharmaceutically asset is present in a proportion of between about 0.2 and 48% by weight and hydro-absorbing agent in a proportion of between about 0.1 and 30% by weight compared to the total weight of the matrix layer that read on the amounts claimed in claims 8 and 42 (See page 6). The hydro-absorbing agents are expected to be capable to absorb water and form a hydrogel since materials and their properties are inseparable, and that reads on the limitations of claims 36-41. The reference teaches the adhesive matrix including polyurethane and silicone polymers that are same as claimed and would be permanent adhesive.

**Finding of Prima Facie Obviousness Rational and Motivation**

**(MPEP §2142-2143)**

Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide an article comprising two outer non-woven layers and an inner adhesive layer containing active agent for cleaning surfaces as taught by Sternfield, and use the article to clean skin as taught by Smith. One would have been motivated to do so because Smith teaches equivalency and suitability of use of wipes to clean skin as well as hard surface and use the active agent to be released accordingly. One would reasonably expect cleansing skin or hard surfaces using article comprising two outer non-woven layer wherein at least one of the outer layers is permeable and inner adhesive layer containing active agent and absorbent materials capable to form hydrogel, wherein the article effectively clean human skin, hard surfaces of house hold and vehicles according to the used active agent.

Further, one would have been motivated to wet the article taught by Sternfield using water, and further add moisture absorbent materials that form hydrogel when wetted to the adhesive layers as taught by Smith including cellulose derivatives and starch. One would have been motivated to do so because Sternfield desired to absorb moisture in order to release the active agent from the middle layer(s) and because Smith teaches water activates the cleansing agent and further teaches cellulose and starch particles in the middle layer that form hydrogel with absorption of water to release the active agents. One would reasonably expect formulating an article comprising two outer non-woven layer wherein at least one of the outer layers is permeable and inner adhesive layer containing active agent and cellulose derivatives or starch, wherein the

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article when wetted with water capable to absorb water and effectively releases the active agent to clean human skin, hard surfaces of house hold and vehicles, etc.

Additionally, one having ordinary skill in the art would have been motivated to replace cellulose derivatives and starches taught by Smith with specific hydro-absorbent materials and further replace adhesives with those taught by Gueret. One would have been motivated to add hydro-absorbent and use silicone or polyurethane adhesives because Gueret teaches that matrix or reservoir comprising such hydro-absorbent and adhesives protect oxidation-labile active agents before use and when contacts with moisture from the skin or in the presence of water applied to the skin allows the gradual release of active compound in a controlled manner. One would reasonably expect formulating an article comprising two outer non-woven layer wherein at least one of the outer layers is permeable and inner adhesive layer of silicone or polyurethane containing active agent and hydro-absorbent cellulose derivatives or starch, wherein the article protects oxidation-labile active agent from degradation and when wetted with water gradually releases the active agent to surfaces.

Absent any evidence to the contrary, and based upon the teachings of the prior art, there would have been a reasonable expectation of success in practicing the instantly claimed invention. Therefore, the invention as a whole would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made.

### ***Response to Arguments***

7. Applicant's arguments filed 12/21/2010 have been fully considered but they are not persuasive.

Applicants argue that each of independent claims 1, 27, and 54-56 has been amended to recite at least one "compound configured to swell within the adhesive matrix upon contact with the solvent to reduce cohesion between the adhesive matrix and the at least one active agent," a feature formerly recited in claim 7. The Examiner relies on Smith for teaching of this claim feature. The Examiner alleges that Smith teaches that the therapeutic composition comprises cellulose or starches that are claimed by applicant as moisture absorbing compounds. Smith teaches "hydrogel forming polymeric material" that is "highly absorbent and able to retain water in its absorbed or 'gel' state." However, Smith explains that this material is for creating a 3-dimensional volume which makes a thin substrate feel like a thicker washing cloth. Smith does not specify that these materials are "configured to swell within the adhesive matrix upon contact with the solvent to reduce cohesion between the adhesive matrix and the at least one active agent," as recited in independent claims.

In response to this argument, it is argued that carboxymethyl cellulose and starch taught by Smith are hydrophilic polymers in nature and are capable to absorb water to form hydrogel. Applicant claimed cellulose and starch as compound configured to swell within the adhesive matrix upon contact with the solvent to reduce cohesion between the adhesive matrix and the at least one active agent, and Smith teaches cellulose and starches that form hydrogel, i.e. absorb water. Newly added reference Gueret teaches the same property as instantly claimed of absorbent materials. The hydrocolloids taught by Smith would display the same claimed properties since materials and their properties are inseparable, as evident by the new ground of rejection. If the prior art meets the structure recited, the properties must be met or Applicant's claim is incomplete. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. As such, it is the examiner's position that cellulose and starch in the composition advanced by Smith

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compositions enumerated in the instant claim set. It has been held that the failure of those skilled in the art to contemporaneously recognize a property, function, or ingredient of a prior art reference does not preclude the presence of these function. In any event this rejection is moot in view of the new ground of rejection.

Applicant argues that there would not have been any suggestion to a person of ordinary skill in the art to combine the skin or hair cleansing article of Smith with the cleansing tissue of Sternfield that is evidently configured for scrubbing heavily-soiled surfaces, as opposed to body parts. Examiner has not set forth any such articulated reasoning or rational underpinning to support the legal conclusion of obviousness based on the proposed combination of Sternfield and Smith.

In response to this argument, applicant's attention is directed to the scope of the present claims that are directed to a product, and all the elements of the product are taught by the combination of the prior art. The future intended use of the product does not impart patentability to the claims. A recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Abrasives taught by Sternfield are used for cleansing skin also. Smith teaches abrasives in the skin cleansing composition, see col.24, line 54. Further, materials taught by Sternfield are suitable for use on the skin and known in the art for use in cosmetics. For example, US 5,350,824 teaches at col.2, lines 59-64 that sodium carbonate are used in cosmetic and it is skin safe. US 4,669,492 using tricalcium phosphate in cosmetic which implies that such materials are skin safe, see claim 1 of the reference.

It is further argued that Smith teaching is not only directed to skin and hair, rather is directed to an article for personal care application as well as for variety of other industries such as automotive care, marine vehicle care, house hold care, dish care, animal care, etc. where surfaces or areas are in need of cleansing and/or application of benefit agent, e.g. wax, conditioner, UV protectant, etc. (col.2, lines 5-10; col.19, lines 28-33). Smith therefore teaches the equivalency and suitability for cleansing wipe for use on skin as well as on hard surfaces and manipulating the active agent and texture of the substrate according to the intended use. Smith however teaches articles for personal care as preferred embodiment. It has been held that the disclosed examples and preferred embodiment do not constitute a teaching away from a broader disclosure or nonpreferred embodiments. *In re Susi*, 440 F.2d 442, 169 USPQ 423 (CCPA 1971). Therefore, one having ordinary skill in the art would have been motivated to combine Sternfield with Smith, and reasonable expectation to provide this invention exists as set forth in this office action.

It has been held that: "When a patent simply arranges old elements with each performing the same function it had been known to perform and yields no more than one would expect from such an arrangement, the combination is obvious." *KSR Int 'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1740 (2007) (quoting *Sakraida v. AG Pro, Inc.*, 425 U.S. 273,282 (1976)). "When the question is whether a patent claiming the combination of elements of prior art is obvious," the relevant question is "whether the improvement is more than the predictable use of prior art elements according to their established functions." In addition, "To determine whether there was an apparent reason to combine

the known elements in the way a patent claims, it will often be necessary to look to interrelated teachings of multiple patents; to the effects of demands known to the design community or present in the marketplace; and to the background knowledge possessed by a person having ordinary skill in the art. To facilitate review, this analysis should be made explicit. But it need not seek out precise teachings directed to the challenged claim's specific subject matter, for a court can consider the inferences and creative steps a person of ordinary skill in the art would employ". Pp. 11-14. KSR INTERNATIONAL CO. v. TELEFLEXINC. ET AL. (2007).

In the light of the foregoing discussion, the Examiner's ultimate legal conclusion is that the subject as a whole matter as defined by the claims would have been prima facie obvious within the meaning of 35 U.S.C. 103 (a).

8. Claims 12, 13, 61-64 are rejected under 35 U.S.C. 103(a) as being unpatentable over the combination of Sternfield, Smith and Gueret, and further in view of JP 04108710 ('710), all references are of record.

The combined teachings of Sternfield and Smith are discussed above.

However, the references do not teach magnetizable particles in the therapeutic composition as claimed by claims 12, 13, 61-64.

JP '710 teaches cosmetic in adhesive matrix comprising magnetizable particles that are capable of promoting of blood flow to the skin without causing inflammation to the skin (abstract).

Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to provide an article to clean skin and other surfaces comprising two non-adhesive layers and a middle layer disposed in between the non-adhesive layers and comprises adhesive material and active agent as taught by the Sternfield combined with Smith and Gueret, and add magnetizable particles to the active agent containing layer as taught by JP '710. One would have been motivated to do so because JP '710 teaches that the magnetizable particles are capable of promoting the blood flow to the skin without causing its inflammation. One would reasonably expect formulating an article comprising two outer layers and middle adhesive layer comprising magnetizable particles that promotes the blood flow to the skin without causing its inflammation.

### ***Response to Arguments***

9. Applicant's arguments filed 12/21/2010 have been fully considered but they are not persuasive.

Applicants further argue that Yoko is cited only for teaching of a "cosmetic in adhesive matrix comprising magnetizable particles, and fails to cure the above-noted deficiencies of Sternfield. Therefore, the cited art does not disclose or suggest all of the recited features of independent claim 61.

In response to this argument, as applicant admits, Yoko is cited solely for teaching of a "cosmetic in adhesive matrix comprising magnetizable particles". As stated before, the combination of Sternfield and Smith teaches article for cleansing skin



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or other hard surfaces, and based on the intended use, one having ordinary skill in the art would add magnetic particles. A conclusion of obviousness under 35 U.S.C. 103 (a) does not require absolute predictability, only a reasonable expectation of success; and references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosure. *In re Bozek*, 163 USPQ 545 (CCPA 1969).

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Isis A. Ghali whose telephone number is (571) 272-0595. The examiner can normally be reached on Monday-Thursday, 6:30 AM to 5:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sharmila Landau can be reached on (571) 272-0614. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

IG

/Isis A Ghali/  
Primary Examiner, Art Unit 1611

